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No. 84 1845

IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1984

OLIVE SORENSEN,

Petitioner,

v.

AUBEY A. FITZGERALD, Trustee,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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28 USC 1471.....3, 7

STATEMENT OF THE CASE

The bankruptcy trustee brought suit to set aside a voidable transfer of $20,000 in cash and made by the bankrupts to their mother and made within the period described in 11 USC 547(b).

Petitioner is an initial transferee of those cash funds as described in 11 USC 550(a).

11 USC 550(a) provides that the court may require return of the precise property, or if the precise property is unavailable, the value of that property.

Petitioner contends that her voluntary conversion of $15,000 to a loan receivable, and to goods and services, make the petitioner invulnerable to the trustee's action for return of money or its value to the estate.

The trustee contends that the petitioner is liable for the money or its value, under 11 USC 547(b) and 11 USC 550(a).

REASONS THE WRIT SHOULD NOT BE GRANTED

The facts present a case of activities by the petitioner and the bankrupt which fall squarely within the circumstances of 11 USC 547(b).

The trustee brought suit to recover the money from the petitioner who is an initial transferee. Her capacity as a defendant and the trustee's suit against her fall squarely within the circumstances of 11 USC 550(a).

The courts below did nothing more than apply plainly written statutory provisions to facts clearly within the statutes' contemplation.

Argument

No construction, or discretion was exercised by an inferior court. 28 USC 1471 which gives the bankruptcy court jurisdiction over property of the debtor in cases arising under Title 11 of the United States Code, is in complete harmony with the statutory provisions of 11 USC 547(b) and 11 USC 550(a).

11 USC 547(b) and 11 USC 550(a) represent a congressional statement that preferential transfers constitute property of the debtor; these transfers are available to the estate of the debtor upon bankruptcy.

Read together, these provisions provide a method by which preferential transfers of property by the debtor are subject to retrieval by the debtor's estate. Thus, all creditors are treated fairly, and none may be preferred.

A trustee's suit under Section 547(a) and 550(b) seeks return of the debtor's assets, which petitioner held to the exclusion of other creditors.

The Writ of Certiorari should not issue since the result is in exact conformance with federal statute, and no case law is in conflict with the decision in this matter.

The cases cited by the petitioner are factually different from this matter. In none is the defendant an initial transferee of cash transferred by the debtor.

This case is <u>not</u> one where the property is in possession of "someone else." The property is in possession of petitioner. Though its form has changed, no one but the petitioner received the property and its benefits.

The district court has original and exclusive jurisdiction of all cases under Title 11, and of all civil proceedings arising under Title 11, and the bankruptcy court is given the exercise of Title 11 jurisdiction of the district courts.

The inferior courts had jurisdiction of the controversy itself. This suit arose pursuant to the provisions of 11 USC 547(b) and 11 USC 550(a).

The parties presented a controversy arising exclusively under Title 11; they did so in a civil proceeding arising exclusively under Title 11. The court had jurisdiction over the parties and to the extent necessary, that jurisdiction extends to rendering a judgment in favor of one party against another under 11 USC 550(a).

The Writ of Certiorari should not issue since the subject matter of the controversy arose exclusively under federal law, and the relief given was in compliance with 11 USC 550(a).

The Court of Appeals, below, committed no procedural error which calls for the exercise of supervisory power of this Court.

After remand on April 5, 1984, the facts of the case were stipulated and the law became plainly applicable. A reasoned decision in this case is both unnecessary and inappropriate. There is no question that the facts compelled the lower court to hold in favor of the trustee.

CONCLUSION

The Writ of Certiorari sought, should not issue:

The inferior court had jurisdiction over the $20,000 cash transfer from debtor to their mother. Property transferred by the debtor made under circumstances described in 11 USC 547(b) constitutes property of the debtor with in the meaning of 28 USC 1471.

Although the property itself had changed form from cash to a loan receivable, owned by petitioner and to goods and services, 11 USC 550(a) gives the court power to award the estate the property or its value.

The inferior court had jurisdiction over the subject matter and property because the dispute arises exclusively under Title 11; no other body of law applies.

The lower court committed no error because after remand the facts were agreed to. Those facts fall clearly

within the prohibition of 11 USC 547(b) and 11 USC 550(a). No further decision is either necessary or would such a decision in this particular case give any assistance to bench and bar.

In this case any decision by the Court of Appeals turns exclusively upon agreed facts to which the relevant federal law plainly applies.

BY _____

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APPENDIX

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11 USC 547(b). Preferences..... A

11 USC 550(a). Liability Of Transferee Of Avoided Transfer... C

547 PREFERENCES

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of property of the debtor--

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made--

(A) on or within 90 days before the date of the filing of the petition; or

(B) between 90 days and one year before the date of the filing of the petition, if such creditor, at the time of such transfer--

(i) was an insider; and

(ii) had reasonable cause to believe the debtor was insolvent at the time of such transfer; and

(5) that enables such creditor to receive more than such creditor would receive if--

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title...

550. LIABILITY OF TRANSFEREE OF AVOIDED TRANSFER

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, or 724(a) of this title [11 USC 544, 545, 547, 548, 549, or 724(a)], the trustee may recover, for the benefit of the estate, the property tranferred, or, if the court so orders, the value of such property, from--

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; ...